

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	Billed Entity No.
143503		
Request for Review of the	)	
Decision and Waiver of the Decision of the	)	Form 471 No. 445846
Universal Service Administrator by	)	
	)	CC Docket No. 96-45
LOWELL JOINT ELEMENTARY SCHOOL	)	
DISTRICT, WHITTIER, CA	)	CC Docket No.
02-6	)	
	)	
Schools and Libraries Universal Service	)	
Support Mechanism	)	

**I. INTRODUCTION**

1. The Lowell Joint Elementary School District, (District) appeals the decision of the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism (also known as the E-rate program) denying funding due to certain clerical or ministerial errors in the application, i.e., a failure to provide to the USAC a properly signed contract prior to filing the FCC Form 471.
2. The District believes that special circumstances exist to justify a waiver of the Commission's rules, and, accordingly files this Request for Review and Waiver of the administrative rules applied to this case.
3. The District requests that the Commission review the decision of USAC denying funding on a Form 471 application because a clerical error lead the USAC to believe District did not have a contract signed by both parties prior to filing the Form 471.

**II. BACKGROUND**

1. The District completed and filed its E-rate application Form 470 with USAC on December 15, 2004 for the 2005 funding year. The Form 471, number 445846, was certified on February 16, 2005. During the SRIR process, District inadvertently sent a copy of their contract with the service provider signed only by the District to the USAC. On October 31, 2005, SRIR follow-up questions were sent to the District and the problem with the "one-signature" contract was not mentioned to the district.
2. On November 11, 2005, the PIA review began and again, the question regarding the contract was not mentioned to the District.
3. On January 26, 2006, District was notified that USAC had denied funding

and District promptly appealed to USAC. USAC stated that District had referred to a signed contract and asked for a copy of that contract. Upon request of the reviewer, District provided a copy of the contract, signed by both parties.

---

Federal Communications Commission

---

4. However, on August 24, 2006 the District received notice from USAC that their appeal had been denied. Subsequent telephone conversations with USAC indicated that, even though District had provided USAC with a contract signed by both parties, USAC was precluded from considering what it deemed “new information” and USAC cannot consider “new information” in an appeal under their rules.

### III. DECISIONS BY THE COMMISSION ON APPEALS

1. As noted in the decision published in the *Bishop Perry Middle School, New Orleans, LA* appeal, SLD # 487170, the “Commission may waive any provision of its rules on its own motion and for good cause shown” (47 C.F.R. §1.3.) Additionally, a “rule may be waived where the particular facts make strict compliance inconsistent with the public interest” *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).
2. In the *Bishop Perry Middle School, New Orleans, LA* case, the Commission also made the following Additional Processing Directives for USAC. “As of the effective date of this Order, we require USAC to provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and an additional opportunity to file the required certifications. Specifically, USAC shall inform applicants promptly in writing of any and all ministerial or clerical errors that are detected in their applications, along with a clear and specific explanation of how the applicant can remedy those errors. USAC shall also inform applications promptly in writing of any missing or incomplete certifications. Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or re-file their FCC Form 470, FCC Form 471 or associated certifications. USAC shall apply this directive to all pending applications and appeals even if such applications or appeals are no longer within the filing window. The 15-day period is limited enough to ensure that funding decisions are not unreasonably delayed for E-rate applicants and should be sufficient time to correct truly unintentional ministerial and clerical errors. The opportunity for applicants to amend their filings to cure minor errors will also improve the efficiency and effectiveness of the Fund. Because applicants who are eligible for funding will now receive funding where previously it was

denied for minor errors, we will ensure that funding is distributed first to the applicants who are determined by our rules to be most in need of funding.”

3. In the *Shawano-Gresham School District* (SLD # 292913) appeal decided by the Commission on February 5, 2004, the SLD denied Shawano-Gresham’s appeal on the grounds that “[d]uring the appeals process we are unable to accept new information except under limited circumstances.” SLD also stated: “[t]his funding request was correctly denied based on the original support documentation you have included with the Form 471.” Shawano-Gresham then filed a Request for Review. The Commission found that “SLD should have considered the new information submitted by Shawano-Gresham on appeal. We also find that the new information supports

---

Federal Communications Commission

---

Shawano- Gresham’s claim that the FRN was for an eligible service. Pursuant to USAC appeal guidelines, new information may not be admitted on appeal to contradict earlier information, but it can be admitted to clarify an ambiguity in earlier information.”

4. In the Request for Review filed by Glendale Unified School District, File No. SLD-143548

decided on February 1, 2006, the Commission once again held that “The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.”

#### IV. DISCUSSION

1. The District believes that under the circumstances described above, the error in submitting a contract signed by only one party instead of the required two signature contract was an inadvertent, ministerial or clerical error. In addition, the District did have a fully executed, two party signature contract in place and the wrong one was submitted to USAC by mistake.
2. The District relies on the order in the *Bishop Perry* case, cited above at **II. 6**, which stated “we require USAC to provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and an additional opportunity to file the required certifications. The decision went on to state, “The opportunity for applicants to amend their filings to cure minor errors will also improve the efficiency and effectiveness of the Fund. Because applicants who are eligible for funding will now receive funding where previously it was denied for minor errors, we will ensure that funding is distributed first to

the applicants who are determined by our rules to be most in need of funding.” In the Bishop Perry case, the Commission reviewed the appeals of numerous districts who had made a number of errors in the submission of their applications for E-rate funding. The errors made were similar to the one made by District in the instant case. District had the fully executed contract on file and simply made a clerical error in submitting a copy which had not been signed by both parties and the error could have been corrected had the USAC alerted District to the problem at any stage in the process. Again, the Bishop Perry decision clearly indicates “USAC shall also inform applications promptly in writing of any missing or incomplete certifications. Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or re-file their FCC Form 470, FCC Form 471 or associated certifications.” District believes this directive also applies to the situation in which District finds itself and, had the USAC alerted District to the apparent problem with the contract at any time during the process, it could have been corrected immediately.

3. The District also relies on the decision in Shawano-Gresham School District as it applies to the USAC’s rule which will not allow it to accept “new information” during the appeal.

---

Federal Communications Commission

---

In the Shawano-Gresham application, new information was submitted to clarify a clerical mistake the applicant had made in their application. The correction involved changing the type of services covered by certain invoices and the SLD ruled that the change constituted new information which they could not accept. In the instant case, District submitted a contract which had only been signed by the District representative and was not signed by the service provider. District had a fully executed contract in place, signed by both parties, but when District submitted it to USAC, it was deemed new information and not accepted. District believes this situation is exactly what the Commission envisioned when it reached its decision in Shawano-Gresham.

4. The District also relies on the decision in the Glendale Unified School District appeal as cited above. In Glendale, the applicant filed a Form 471 which showed an incorrect service start date. When they submitted a corrected form to the SLD, it was not accepted as it was deemed new information. The Commission granted their Request for Review and Waiver, stating that “We find that although Glendale committed an unintentional, clerical error when it listed the incorrect service start date on its FCC Form 486, it adhered to the core program requirements. As we recently noted, the E-rate program is fraught with complexity from the perspective of beneficiaries, resulting in a significant number of applications for E-rate support being denied for ministerial or clerical errors. We find that the action we take here promotes the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the “Act”), by helping to ensure that Glendale obtains access to discounted telecommunications and information services.” District believes that its own clerical/ministerial error is substantially similar to the error cited in the Glendale appeal and the Commission should grant District’s Request for Review and Waiver.

## V. CONCLUSION

For the reasons discussed herein, district respectfully requests the Commission grant the Request for Review and Waiver and Remand the case to the USAC for further consideration pursuant to the E-Rate rules.

Submitted October 21, 2006

Inc. Linda S. Smith  
Director of E-Rate Services  
California School Management Group,

1111 "E" Street  
Tracy, CA 95376  
(949) 547-4087  
Fax No. (949) 367-9270  
Email: [lismith@csmgconsulting.com](mailto:lismith@csmgconsulting.com)